Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Merle Richard Schmidt

Petitioner

vs.

Thomas Buchanan

Respondent

On Petition for Writ of Certiorari
To The Supreme Court of Iowa

Petition for Common Law Writ of Certiorari

Merle Richard Schmidt
C/O P.O. Box 416
Victor, Iowa 52347-0416
Phone: 319-685-6222
Without counsel of record

BRIEF INTRODUCTORY STATEMENT

Under color of his office of a magistrate, Respondent Thomas Buchanan maliciously uses non-appealable accusatory processes (contempt) to inflict injury without cause while in want of jurisdiction.

QUESTION PRESENTED

Does a person employed as a County Magistrate have lawful authority to continually incarcerate people in the County jail, maliciously and without cause or reason, while using administrative non-appealable accusatory processes to abrogate free speech under color of "absolute judicial immunity?"

LIST OF ALL PARTIES

Merle Richard Schmidt, Petitioner
c/o P.O. Box 416
Victor, Iowa 52347-0416
(319) 685-6222

Thomas Buchanan, Respondent
Represented by: Julie Burger
Assistant Attorney General
Hoover State Office Building
Des Moines, IA 50319
(515) 281-5531

CITATION OF OFFICIAL AND UNOFFICIAL REPORTS

Iowa County	No. LACV022129
Iowa Court of Appeals	No. 05-896
Iowa Supreme Court	No. 05-0655

STATEMENT OF THE BASIS FOR JURISDICTION

The date on which the highest state court decided my case was February 28, 2006. A copy of that decision appears at Appendix page 1.

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. §1651.

CONSTITUTIONAL PROVISIONS

"No person shall be deprived of life, liberty, or property, without due process of law." Iowa Constitution, Article I, SEC. 9 (Amendment V of the federal Constitution)

STATEMENT OF THE CASE

In blatant violation of mandatory Iowa Disciplinary Rule DR7-105 by Iowa County Attorney Lewis McMeen, individuals including Merle Schmidt have been inundated with many, many, criminal charges solely for the Iowa County Attorney to gain civil advantage over title to soil. Accordingly, dismissals have occurred in Iowa County criminal case numbers SMAC063924, SMAC063925, and SMAC064328.

After a pre-trial hearing on several misdemeanor charges, at or about 10:05 A.M. on December 17, 2002 Iowa County Attorney Lewis McMeen vowed to Schmidt in a very angry voice, "You're going to learn not to mess with the County Attorney." Schmidt was later found guilty in bench trial on three misdemeanor charges of trespass. Upon the Iowa County Magistrate being put on notice that the defendant's "presumption of innocence" could not be destroyed with "presumptive evidence," the files all disappeared from the Iowa County Courthouse in case numbers SMAC063244, SMAC063251, and SMAC063465.

In 2003, Lance Tod Schaefer and Schmidt were summoned to appear under selective prosecution by Iowa County Sheriff's officials for misdemeanor charges. On the morning of May 27, 2003 Schaefer and Schmidt did defend in magistrate's court at which time Thomas Buchanan indicated that "justice was on a time clock and he was tired" and incarcerated Lance Schaefer for seven days for contempt without lawful cause or reason. Thomas Buchanan and County Attorney Lewis McMeen then promptly went golfing together and had a late supper in Cedar Rapids.

With Schmidt defending before Thomas Buchanan just prior to Schaefer being incarcerated, Schmidt was subsequently found guilty on two unsigned "no driver's license" traffic citations for failure to appear in case numbers STWG749192 and STWG749193.

A Petition to vacate a void judgment is not familiar to the Iowa District Court and the Iowa Supreme Court has refused to execute justice by vacating the void judgments of traffic convictions for failure to appear in Iowa Supreme Court case number 05-0383.

With magistrate court being in want of jurisdiction over the person, Schmidt did not pay the alleged traffic fines levied for failure to appear when justice was on a time clock in Thomas Buchanan's court.

Schmidt was subsequently using a farm tractor on a dirt road to tend cows, all in harmony with Iowa Code section 321.176. Apparently upon directions of Iowa County Attorney Lewis McMeen, Sheriff James Slockett mailed a citation for using a farm tractor under suspension, and Schmidt was ordered to appear on March 2, 2004. With the ongoing conspiracy in Iowa County, Schmidt was incarcerated for seven days for contempt without any justification or due process, at which time Sheriff James Slockett stated to Schmidt, "If you mess with the bull, you're gonna get the horn."

Schmidt's magistrate contempt conviction was later annulled upon Certiorari proceedings in the Iowa District Court.

In harmony with Hafer v. Melo, Schmidt filed a suit for damages against Thomas Buchanan in his personal capacity as Schmidt's only remedy to end Buchanan's non-appealable actions under color of law. The suit was dismissed in the Iowa District Court under the doctrine of

"absolute judicial immunity." After dismissal of suit in the Iowa District Court, Thomas Buchanan then commingled law with equity under color of "absolute judicial immunity," in violation of Article V, Sec. 6, of the Iowa Constitution and AGAIN incarcerated both Schaefer and Schmidt "per Equity Civil Order," all while Buchanan is clearly DISQUALIFIED pursuant to Iowa Code Section 602.1606.

The latest in the conspiracy against Schmidt, and in violation of Iowa Disciplinary Rule 7-105 by the County Attorney to gain civil advantage over title to soil, are case numbers CISMAC064336 and CISMAC064371. Even though Thomas Buchanan is disqualified with this suit for damages pending against him, Buchanan does not recuse himself and continues to file Orders in favor of his golfing friend Lewis McMeen and schedule bench trial while Buchanan wilfully violates Iowa Rule of Criminal Procedure 2.11(8) and rule 2.52. Thomas Buchanan and County Attorney Lewis McMeen act in concert to refuse to inform the accused of the nature and cause of criminal accusations.

Petitioner's Appendix sets forth the Order from the Iowa Supreme Court thereby denying this Petitioner's Application for Further Review of the Iowa Court of Appeals.

ARGUMENT

The present gravemen was brought before the Iowa district court, not on a motion for summary judgment but on a motion to dismiss. Thomas Buchanan's counsel has admitted the facts stated in Plaintiff Schmidt's Petition. Accordingly, there cannot be any disputed questions of fact at this stage. The courts must construe the complaint

in the light most favorable to the plaintiff, and accept all factual allegations as true.

As shown, Thomas Buchanan was attempting to acquire jurisdiction over state Citizen Schmidt in soliciting a plea. Want of jurisdiction was made apparent to Thomas Buchanan as Buchanan was holding in his hand Schmidt's initial pleading challenging Buchanan's jurisdiction.

> "There is no presumption in favor of the jurisdiction of courts of inferior, limited, or special jurisdiction, or in favor of the jurisdiction of inferior magistrates or tribunals exercising judicial functions. Jurisdiction in such cases must affirmatively appear, and the facts conferring jurisdiction must be affirmatively found to exist. However, it is within the constitutional power of the legislature to change this rule.
>
> Mere exercise of jurisdiction by such courts does not raise a presumption of the existence of the requisite jurisdictional facts. One who relies on a decision or benefit under its proceedings, must affirmatively show its jurisdiction by alleging and proving it. This rule applies to jurisdiction both of the person, and of the subject matter." 21 C.J.S. § 75.

This Petitioner, Merle Richard Schmidt, is nearly certain that Thomas Buchanan will again wilfully abrogate free speech and sentence Schmidt to jail for contempt without cause or reason if Schmidt again appears in person before Thomas Buchanan to defend against criminal charges that are presented by Buchanan's golfing friend Lewis McMeen, all while Lewis McMeen violates mandatory Iowa Disciplinary Rule 7-105 such as in said Iowa County case numbers CISMAC064336 and

CISMAC064371.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." MIRANDA v. ARIZONA, 384 U.S. 436 (1966)

WHEREFORE, Petitioner requests relief as the Court deems appropriate to stop the wilful abuse of power under color of law and that all costs be assessed to the Respondent.

CONCLUSION

Accusatory processes, such as non-appealable contempt, are not judicial acts subject to judicial immunity. Jurisdiction is a prerequisite to judicial immunity and Thomas Buchanan acted in absence of jurisdiction over the person. Thomas Buchanan has failed the two prong test to qualify Buchanan for absolute judicial immunity. The petition for writ of certiorari should be granted.

Respectfully submitted,

Merle Richard Schmidt

Merle Richard Schmidt
C/O P.O. Box 416
Victor, Iowa 52347-0416

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct as I verily believe. Executed on:

April 6, 2006 — Date

Merle Richard Schmidt — Signature

Supreme Court, U.S.
FILED
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

Merle Richard Schmidt

Petitioner

vs

Thomas Buchanan

Respondent

On Petition for Common Law Writ of Certiorari
To The Supreme Court of Iowa

Appendix

Merle Richard Schmidt
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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ORDER OF THE IOWA SUPREME COURT 1

APPLICATION FOR FURTHER REVIEW THAT WAS MADE TO THE IOWA SUPREME COURT..... 2

CERTIFICATION OF THIS APPENDIX 29

TABLE OF AUTHORITIES

Cases Pages

Barrett, v. Harrington, No. 96-6207, United States Court of Appeals, Sixth Circuit, argued August 5, 1997 and decided Nov. 20, 1997, ... 23

Declaration of Independence 24

Forrester v. White, 484 U.S. 219, 227-30 23

Gregory v. Thompson (9th Cir. 1974)

500 F.2d 59 ..... 21, 22

Hafer v. Melo, 502 U.S. 21 15

Iowa Code section 321.176, subsection 2 17

Iowa Code section 554.1201(31) 28

Iowa Code section 602.1606, subsection 1 21

Iowa Constitution, Article I, Sections 1.....20

Iowa Constitution, Article I, Sections 7 20

Laird v. Tatum, 408 U.S. 1 18

Miranda v. Arizona 384 US 436 25

Morrison v. Lipscomb, 877 F.2d 463 23

Regan v. Price, Court of Appeal of the State of California, Third Appellat District (Placer), filed on August 17, 2005 ..... 20, 21

Sevier v. Turner, 742 F.2d 262, 272 (6th Cir. 1984..... 23

Tagliavia v. County of Los Angeles, 112 Cal.App.3d 762... 22

IN THE SUPREME COURT OF IOWA
No. 05-0655
Iowa County No. LACV022129
ORDER

MERLE RICHARD SCHMIDT,
Plaintiff - Appellant,

vs.

THOMAS BUCHANAN,
Defendant - Appellee

FILED
FEB. 28 2006
CLERK
SUPREME COURT

After consideration by this court, further review of the above captioned case is denied.

Dated this 28th day of February, 2006.

THE SUPREME COURT OF IOWA
By s/Louis A. Lavorato
Louis A. Lavorato, Chief Justice

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LOCAL

IN THE

SUPREME COURT OF IOWA

CASE NO. 05-0655

IOWA COURT OF APPEALS

CASE NO. 05-896

Merle Richard Schmidt,
Plaintiff-Appellant

vs.

THOMAS BUCHANAN
Defendant-Appellee

APPLICATION FOR FURTHER REVIEW
OF THE IOWA COURT OF APPEALS
OPINION FILED DECEMBER 21, 2005

Considered by Huitink, P.J., and Mahan and Hecht, J.J.

Merle Richard Schmidt
C/O P.O. Box 416
Victor, Iowa 52347-0416
Without counsel of record

CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2006, I served two (2) copies of this document by either mailing or hand delivering said copies to the following counsel of record:

JULIE A. BURGER
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

CERTIFICATE OF FILING

I further certify that on the 6th day of January, 2006, I will file this document by mailing or hand delivering eighteen (18) copies of same to the Clerk of Supreme Court at 1111 E. Court Ave., Des Moines, Iowa 50319.

s/ Merle Richard Schmidt

TABLE OF CONTENTS

Certificate of Service 3
Certificate of Filing 3
Table of Contents 4
Table of Authorities 5
Order of the Iowa District Court
annulling Contempt of Court 6
Dismissal of the suit for damages 11
Opinion of the court of appeals showing the date of filing.. 14
Application for Further Review 15
Grounds 15
Judicial Notice 15
Brief in Support of Further Review 15
Summary of Proceedings 15
Background issues not heard because of
summary dismissal 16
Contentions 18
1. First prong of the two prong test — judicial acts 20
2. Second prong of the two prong test --- jurisdiction 23
Conclusion 27
Verification 29

Request for Oral Argument 29

Filing and Printing Cost Certificate 29

TABLE OF AUTHORITIES

BARRETT, v. HARRINGTON, No. 96-6207, United States Court of Appeals, Sixth Circuit, argued August 5, 1997 and decided Nov. 20, 1997

Declaration of Independence

Forrester v. White, 484 U.S. 219,

Gregory v. Thompson (9th Cir. 1974) 500 F.2d 59

Hafer v. Melo, 502 U.S. 21

Iowa Code section 321.176, subsection 2

Iowa Code section 554.1201(31)

Iowa Code section 602.1606, subsection 1

Iowa Constitution, Article I, Section 1

Iowa Constitution, Article I, Sections 7

LAIRD v. TATUM, 408 U.S. 1

Miranda v. Arizona 384 US 436

Morrison v. Lipscomb, 877 F.2d 463

Regan v. Price, Court of Appeal of the State of California,

Third Appellat District (Placer), filed on August 17, 2005

Sevier v. Turner, 742 F.2d 262, 272 (6th Cir. 1984)

Tagliavia v. County of Los Angeles, 112 Cal.App.3d 762

IN THE IOWA DISTRICT COURT FOR IOWA COUNTY

MERLE RICHARD SCHMIDT Plaintiff,	)	No. CVCV021962
vs.	)	
MAGISTRATE THOMAS BUCHANAN Defendant.	)	**ORDER**

This file came to me for hearing on the plaintiff's petition for writ of certiorari pursuant to prior assignment. The plaintiff appeared personally and with counsel Brian Earley. The defendant appeared personally and with counsel Tim McMeen.

Plaintiff stipulated that the factual basis for these proceedings are as set forth in Magistrate Buchanan's certification filed April 20, 2004. I then heard statements and arguments of counsel. After review, I enter the following ruling.

FINDING OF FACT

On March 2, 2004, the Merle Schmidt appeared in open court before Magistrate Buchanan for purpose of an arraignment on a charge of driving under suspension. Deputy Clerk Phyllis Rodenberry (sic), Assistant County Attorney Tim McMeen, Department of Correctional Services officer Dale Slaymaker, and two members of the public were present in the courtroom.

Magistrate Buchanan asked Mr. Schmidt if he wished to plead guilty or not guilty. Mr. Schmidt replied he was a victim of a conspiracy. Magistrate Buchanan asked Mr. Schmidt on several occasions if he wanted to plead guilty or

not guilty, receiving the same response. Magistrate Buchanan then asked Mr. Schmidt who was involved in the conspiracy. Mr. Schmidt responded the Clerk of Court Sheryl Neal, the sheriff James Slockett, and Magistrate Buchanan were involved in the conspiracy. Magistrate Buchanan was acting in the discharge of his official duties at the time Mr Schmidt made that statement. Mr. Schmidt made the statement in the immediate view and presence of Magistrate Buchanan.

Magistrate Buchanan considered Mr. Schmidt's statement to be contemptuous and insolent, impugning his fairness. Magistrate Buchanan immediately found Mr. Schmidt in contempt and sentenced him to seven days in jail. Mr. Schmidt filed the petition for writ of certiorari alleging, in essence, that Magistrate Buchanan exceeded his jurisdiction or otherwise acted illegally when finding Mr. Schmidt in contempt.

CONCLUSION OF LAW

Certiorari is an action at law to test whether a tribunal-in this case, the magistrate court-has exceeded its jurisdiction or otherwise acted illegally. French v. Iowa Dist. Ct., 546 N.W. 2d 911, 913 (Iowa 1996). Only the district court acting through a district judge may grant the writ directed at a judicial magistrate. Iowa R.Civ.P. 1.1404. The plaintiff has the burden to show the defendant has exceeded his proper jurisdiction or otherwise acted illegally. Gibb v. Hanson, 286 N.W. 2d 180, 184 (Iowa 1979).

Conduct that is contemptuous or insolent behavior toward a court while engaged in the discharge of its judicial duties which may tend to impair the respect due to its authority is punishable as contempt. Iowa Code §665.2(1)(2003). Contempts may be indirect (constructive) or direct. An indirect contempt is an act not committed in the presence of a court which tends to degrade the court or

obstruct, interrupt, prevent, or embarrass the administration of justice. A direct contempt consists of words spoken or acts committed in the presence of the court, which tent (sic) to have the same effect. Lutz v. Darbyshire, 297 N.W. 2d 349, 353 (Iowa 1980).

No person may be punished for contempt unless the alleged contumacious actions have been established by proof beyond a reasonable doubt. Amro v. Iowa Dist. Ct., 429 N.W. 2d 135, 140 (Iowa 1988). Contempt is established by proof of conduct "that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner has the right or not." Medina v. Iowa District Court for Woodbury County, 552 N.W.2d 140, 141 (Iowa 1996). The contempt power "is indispensable to the protection of due and orderly administration of justice and in maintaining the authority and dignity of the court. 'But its exercise is a delicate one, and care is needed to avoid arbitrary or oppressive conclusions.'" Gibb, 286 N.W.2d at 184, quoting Knox v. Municipal Court 185 N.W.2d 705, 707 (Iowa 1971). Since contempt proceedings are quasi-criminal in nature and courts are to carefully exercise its contempt power, the statute proscribing contemptuous conduct is to be construed rather strictly. Hicks v. Stigler, 323 N.W.2d 262, 263 (Iowa Ct. App. 1982).

The facts before me are not in dispute. In response to a question posed by Magistrate Buchanan, Mr. Schmidt accused the magistrate of being involved in a conspiracy against Mr. Schmidt. The issue before me is whether this conduct constitutes a contempt.

Mr. Schmidt argues that it does not. He argues that he was only answering the magistrates question based upon his honest opinion. He further maintains that if the magistrate did not want to hear his answer, the magistrate should not

have asked the question. He was, he says, exercising his first amendment right of free speech. Further, he postulates, that had he refused to answer the question, the magistrate may have viewed that as contemptuous conduct as well. Finally, Mr. Schmidt points to the fact that he gave his answer in a normal tone, without raising his voice or otherwise disrupting the court proceedings.

The State argues that Mr. Schmidt's statement made in open court in the presence of others has the inevitable affect of impairing the respect due the court. Mr. Schmidt could have, rather, simply declined to answer the magistrate's question and avoided presenting his conspiracy theory in a courtroom attended by members of the public as well as court officials. Once he chose to answer the question, though, and in so doing implicated the magistrate in a conspiracy, his conduct became contemptuous and insolent behavior toward the court.

After review, I conclude that Mr. Schmidt's statement to Magistrate Buchanan does not constitute a contempt as contemplated by Iowa Code §665.2. I have reached this conclusion for two reasons. First, Mr. Schmidt's statement was in direct response to the magistrate's question as to who was involved in the conspiracy. This argues against the conclusion that Mr. Schmidt's conduct was intentional and deliberate with a bad or evil purpose. Mr. Schmidt did not volunteer or announce any unsolicited information about his belief that the magistrate was involved in a conspiracy. If anything, he was being respectful of the authority of the court in responding to the direct inquiry Magistrate Buchanan made of him.

Secondly, Mr. Smith's (sic) remark was not made in an insolent manner. It is not disputed that Mr. Smith (sic) answered Magistrate Buchanan's question in a normal tone of voice with, apparently, no accompanying gestures or

inflections to emphasize the statement. I do not believe that this statement under these circumstances falls within the necessarily strict construction of §665.2. In accord, see Hicks, 323 N.W.2d at 263 (false statements not made in an insolent manner, though not condoned, do not fall within the strict construction of §665.2)

RULING

For the foregoing reasons, I annul Magistrate Buchanan's order finding Mr. Smith (sic) in contempt of court. I assess the costs of the action against the State.

Clerk to notify.

s/Robert E. Sosalla
ROBERT E. SOSALLA
Judge, Sixth Judicial District

IN THE IOWA DISTRICT COURT IN AND FOR
IOWA COUNTY

MERLE RICHARD SCHMIDT Plaintiff	))	LACV022129
v.	)	DISMISSAL
THOMAS BUCHANAN	)	

The Defendant, Magistrate Thomas Buchanan, has moved to dismiss the tort claim filed against him by Plaintiff Merle Schmidt. The motion has been resisted. The court has reviewed the pleadings and legal arguments and determines that the motion should be sustained.

The Defendant, Thomas Buchanan, is an appointed judicial magistrate. On March 2, 2004, the magistrate found Merle Schmidt in contempt of court. It was the magistrate's position that Mr. Schmidt was contemptuous by stating or insinuating the magistrate was unfair and/or involved in a "conspiracy". Mr. Schmidt was sentenced to seven days in the county fail (sic) for his behavior. Subsequently, the district court sustained Schmidt's petition for a writ of certiorari. The court found the magistrate was acting in the discharge of his official duties but determined that Schmidt's statements or behavior did not constitute contemptuous behavior.

Merle Schmidt has now sued Magistrate Buchanan for over $350,000 in damages.

When the court considers all of the allegations made in Schmidt's petition to be true, for the purpose of the motion, the petition still fails because the magistrate is entitled to absolute judicial immunity.

The purpose of a motion to dismiss for failure to state

a claim is to test the legal sufficiency of the petition. Woods v. Schmitt, 439 N.W.2d 855, 859 (Iowa 1989). A motion is sustainable only when it appears to a certainty the pleader has failed to state a claim upon which any relief may be granted under any state of facts which could be proved in support of the claim asserted. Hunt v. State, 538 N.W.2d 659 (Iowa App. 1995). The petition must be construed in the light most favorable to the Plaintiff, and the court resolves all doubts and ambiguities in the Plaintiff's favor. Id. This court recognizes that motions to dismiss are not favored if the viability of the petition is in any way debatable. See Cutler v. Klass, Wicher & Mishne, 473 N.W.2d 178, 181 (Iowa 1991). Nevertheless, the court concludes that even giving all deference to the Plaintiff's allegations, the petition cannot be sustained and must be dismissed.

The certiorari ruling which Plaintiff attached to his petition sets out the factual scenario in which he was found in contempt. The district court made a finding of fact that the magistrate was acting in his official capacity when Schmidt was determined to be in contempt. Although Schmidt has alleged that the magistrate exceeded his jurisdiction, the pleaded facts in no way support that averment.

In Iowa, as in all jurisdictions in the United States, judges are entitled to absolute judicial immunity from damages for acts committed with their judicial jurisdiction. This immunity applies even if the judge is accused of acting maliciously and corruptly because it is in the public's best interest that judges be able to exercise their function without fear of consequences and with independence. Blanton v. Barrick, 258 N.W.2d 306, 308 (Iowa 1977). The principle to be applied in this case is so well established that encyclopedic authority is stated in support of the court's conclusion. Judicial immunity from civil liability extends to all classes of courts from the highest judge of the nation to judicial officers

who have the most limited jurisdiction. 17 Am. Jur.2d, Judges, section 70(1994). "The rule of non-liability has been applied even when the justice of the peace acted maliciously and corruptly. For example, a justice is not liable for imprisoning a person for contempt in a proceeding within his jurisdiction, even though he acted corruptly and maliciously." 47 Am. Jur.2d, Justice of the Peace, section 104 (1995).

> "Absolute immunity generally applies to all acts committed within the scope of a public office, even though the acts might be malicious, corrupt, or in bad faith. Thus, judges are not deprived of immunity from a suit for money damages merely because of allegations that they committed grave procedural errors, or acted maliciously, corruptly, or with evil motive, intent, personal interest, bad faith, or outright malevolence. Since absolute immunity is justified and defined by the governmental functions it protects and serves, not by the motives with which a particular officer performs those functions, it is a judges action alone, not intent that must be considered: state of mind is not a necessary element and judicial immunity applies however injurious the consequences to the plaintiff."

46 Am. Jur.2d, Judges, section 17 (1994).

The court concludes that the Defendant Magistrate in this case is entitled to absolute judicial immunity. The Motion to Dismiss is sustained. Costs are assessed to the Plaintiff.

Dated this 18 day of March, 2005.

s/L. Vern Robinson

L. VERN ROBINSON,
Judge, 6th Judicial District of Iowa

IN THE COURT OF APPEALS OF IOWA
No. 5-896 / 05-0655
Filed December 21, 2005

MERLE RICHARD SCHMIDT,
Plaintiff-Appellant,

FILED
DEC 21 2005
CLERK SUPREME COURT

vs.

THOMAS BUCHANAN,
Defendant-Appellee.

Appeal from the Iowa District Court for Iowa County, L. Vern Robinson, Judge.

Merle Richard Schmidt appeals the district court's order dismissing his lawsuit. AFFIRMED.

Merle Schmidt, Victor, pro se.

Thomas J. Miller, Attorney General, Julie Burger, Assistant Attorney General, for appellee.

Considered by Huitink, P.J., and Mahan and Hecht, J.J.

PER CURIAM

Having reviewed the record in this matter, the case is affirmed without opinion pursuant to rule 6.24(1) and (4) of the Iowa Rules of Appellate Procedure.

AFFIRMED.

APPLICATION FOR FURTHER REVIEW

Merle Richard Schmidt, hereafter referred to as "Schmidt", hereby makes application to the Iowa Supreme Court for further review of court of appeals case number 5-896, and prays that this honorable Court review the entire record and then reverse the Iowa Court of Appeals.

GROUNDS

The Iowa Court of Appeals has made an egregious error in law when it AFFIRMED.

This Court has grounds to review the Iowa Court of Appeals in accordance with Iowa Rule of Appellate Procedure 6.402 (2) a.

REQUEST FOR JUDICIAL NOTICE

Schmidt requests that this Court take judicial notice at this immediate stage of the proceedings, pursuant to Iowa Rule of Evidence 5.201, that Schmidt has verified his allegations of conspiracy while Thomas Buchanan continues to use non-judicial accusatory processes to inflict injury under color of law.

BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

Summary of Proceedings

Defendant Thomas Buchanan is employed as Iowa County Magistrate. In a set malicious pattern, Thomas Buchanan did, without cause or reason, use non-judicial accusatory process to willfully inflict injury by incarcerating Schmidt for contempt of court.

Schmidt has no "*appellate*" recourse to stop the willful illegal injuries inflicted by Thomas Buchanan. Without appellate process to prevent unlawful injuries, a suit for damages is Schmidt's only remedy.

Schmidt exhausted all administrative remedies and did file suit for damages against Thomas Buchanan personally; all in accordance with Hafer v. Melo, 502 U.S. 21.

Schmidt's only remedy was dismissed in the Iowa District Court by falsely applying absolute judicial immunity doctrine to non appealable administrative acts of Thomas Buchanan.

Within its substantial case load, the Iowa Court of Appeals has made its egregious error of law that goes contrary to other appellate court decisions.

Background issues not heard because of summary dismissal

Schmidt is a victim of conspiracy in Iowa County. On May 27, 2003, Thomas Buchanan did, without cause or reason, incarcerate Schmidt's associate, Lance Schaefer, for seven days for contempt, and at the same time Buchanan did cause to be entered two traffic convictions against Schmidt for failure to appear when Schmidt was definitely present and Buchanan indicated to Schaefer and Schmidt that justice was on a time-clock. On May 27, 2003, after justice was on a time clock, Thomas Buchanan and Lewis McMeen then went golfing together and had a late supper that evening in Cedar Rapids.

Thomas Buchanan has unlawfully supported his golfing friend Lewis McMeen after County Attorney Lewis McMeen made a very angry threat to Schmidt on December 17, 2002, in the Iowa County Courthouse, to wit: ***"You're going to learn not to mess with the County Attorney."***

Schmidt did not pay the amount allegedly owed for the alleged traffic convictions that were entered without due process of law for failure to appear when Schmidt did in fact appear when justice was on a time clock.

On a later date, Schmidt was tending cows by using a farm tractor on a dirt road at the farm. Schmidt was then maliciously charged, by mailed citation from the Iowa County Sheriff, of driving a farm tractor on a dirt road under suspension. This charge was clearly contrary to Iowa Code

Section 321.176, subsection 2, and was apparently executed by the Sheriff upon direction of County Attorney Lewis McMeen to carry through with his earlier threat.

In his established malicious pattern, on March 2, 2004, Thomas Buchanan did unlawfully use the office of Magistrate to also wilfully incarcerate Schmidt for seven (7) days, like Schaefer, in the Iowa County jail without any cause or reason. Schmidt's contempt conviction was executed to specifically abrogate free speech and was a continuation of the ongoing conspiracy contrived under color of law and under color of absolute judicial immunity.

Ex parte hearing was held on March 4, 2004 while Schmidt was in the Iowa County jail. Bench trial was scheduled and Schmidt received the order setting trial from a jailer on March 4, 2004.

After release from the Iowa County jail, Schmidt timely reserved his right to a jury trial regarding driving a farm tractor on a dirt road to tend cows.

In further conspiracy, on the date scheduled for trial, upon Schmidt's objection to bench trial, Buchanan summoned Sheriff's deputies and Buchanan railroaded Schmidt through a bench trial without jury, found Schmidt guilty of driving an unlicenced farm tractor under suspension on a dirt road while tending cows, and ordered Schmidt to pay over $2,000.00 for using the tractor at the farm. Attorney Brian Earley was hired by Schmidt to assist in fighting the conspiracy in Iowa County and Mr. Earley then timely mailed notice of appeal to the Iowa County Clerk of Court. With the continuing conspiracy against Schmidt, Brian Earley's notice of appeal did not get filed until the work-day after it would have been timely.

Buchanan's conviction of Schmidt for contempt of court was "annulled" upon petition for writ of certiorari to the Iowa District Court.

Without any opportunity to appeal before execution of

the jail sentence, annulment of a contempt conviction in no way prevents the injuries that are willfully inflicted by Buchanan under color of law.

Unlike judicial proceedings, contempt of court is an accusatory process that is not appealable. Judicial proceedings are appealable to prevent unjust injury to litigants. Schmidt has absolutely no alternative remedy to put a stop to Buchanan's abusive accusatory processes other than a suit for damages.

The Code of Iowa clearly disqualifies Thomas Buchanan from judicial proceedings involving Schmidt and Schmidt's associate Lance Schaefer because of lawsuit against Buchanan and because of Buchanan's blatant prejudices. Since dismissal of this suit for damages in the Iowa District Court, and under the supposed cloak of absolute judicial immunity, Thomas Buchanan has again clearly shown his willingness to wrongfully incarcerate Schmidt and Schaefer by ordering arrest warrants per "Equity Civil Order" in a blatant bad faith violation of the Iowa Constitution. Under these arrest warrants, per Equity Civil Order, Buchanan did require $4,000.00 in cash bonds to be posted to secure release from the Iowa County jail. These cases were subsequently dismissed and the bonds exonerated by Buchanan after injuries had once again been willfully inflicted by Buchanan.

Contentions

"*Those who already walk submissively will say there is no cause for alarm. But submissiveness is not our heritage. The First Amendment was designed to allow rebellion to remain as our heritage.*" THE HONORABLE JUSTICE WILLIAM O. DOUGLAS, LAIRD v. TATUM, 408 U.S. 1 (1972).

Justice William O. Douglas understood freedom of speech, and he understood the right that is possessed by Schmidt to speak with Thomas Buchanan without fear of

being incarcerated. Justice Douglas understood that government's just application of the First Amendment was essential to preclude the need for the people of America to look to the Second Amendment.

The courts have well established that an individual has a DUTY to defend when criminal charges are brought by the government. Schmidt was incarcerated by Thomas Buchanan as Schmidt very calmly and appropriately exercised free speech while Schmidt was performing his lawful duty to defend against criminal charges.

Iowa is a notice pleading state. A petition is sufficient if it provides the defendant with adequate notice of the claim, and the legal basis for a claim. A petition need not recite all of the evidence which the plaintiff believes supports the claim.

Likewise, it follows then that a sworn petition need not recite all of the evidence to overcome judicial immunity under the well established two prong test. The presumption of correctness lawfully resides in the Plaintiff's petition, and the burden of proof for absolute judicial immunity rightfully belongs to the Defendant to prove both that his act was a judicial act, and also to prove that the Defendant acted within the scope of proper jurisdiction.

The Defendant has not proven that his non-appealable accusatory processes used to annul free speech are in fact "judicial acts" that qualify for immunity, and the Defendant has absolutely not proven that the Defendant had "jurisdiction" over Schmidt prior to entry of a plea. There was clearly no plea entered thereby giving Buchanan jurisdiction, and there is absolutely no other contractual agreement by this Free Inhabitant giving Buchanan jurisdiction. Thomas Buchanan has completely failed in his burden of proof under the well established two prong test for judicial immunity.

1. First prong of the two prong test — judicial acts

Thomas Buchanan has willfully inflicted an administrative assault upon the Plaintiff and an administrative assault upon the Iowa Constitution, Article I, Section 1 including the defense of life and liberty. Buchanan has willfully inflicted an administrative assault upon the Iowa Constitution, Article I, Section 7 and upon free speech. Buchanan has abused his administrative accusatory processes under color of law.

The courts have continually rejected the argument that accusatory processes, such as contempt proceedings or initiating criminal prosecutions, are judicial acts subject to absolute judicial immunity. Judicial acts, for purposes of immunity, do not include "an action that is administrative in nature and that does not alter the rights and liabilities of the parties." Such administrative acts (including accusatory processes) are not subject to the doctrine of judicial immunity. The courts have noted that applicable to "judicial acts" there is availability of alternate forums and methods, apart from civil suit for damages, for litigants to protect themselves from the potential consequences of actions taken by judges. The courts note that, "A judicial act within the meaning of the doctrine may normally be corrected on appeal." (Quote from Regan v. Price printed below) Such is not the case for the injuries inflicted by Buchanan upon Schmidt. Schmidt is not astute enough to find availability of any alternate forums and methods, apart from civil suit for damages, for this litigant to protect himself from the potential consequences of willful and malicious accusatory actions taken by Thomas Buchanan under color of absolute judicial immunity. Thomas Buchanan continues to threaten freedom of speech under color of absolute immunity and over Schmidt's objection to Buchanan's proceedings, and even though Thomas Buchanan is clearly DISQUALIFIED from all judicial acts respecting

Schmidt pursuant to Iowa Code section 602.1606, subsection 1.

Quoting the very recent decision of the Court of Appeal of the State of California, Third Appellat District (Placer), that was filed on August 17, 2005 in the case of Regan v. Price, and certified for publication, to wit:

"The case with the fact pattern closest to the one here is *Gregory v. Thompson* (9th Cir. 1974) 500 F.2d 59 (*Gregory*). The plaintiff Gregory, a retired actor, accompanied a litigant accused of a minor traffic violation into Judge Thompson's courtroom and asked to represent the litigant. Judge Thompson retorted that a non-lawyer could not so act and ordered Gregory to leave his courtroom. Gregory answered, "'O.K., you throw me out,'" whereupon the judge "did just that." (*Id.* at p. 61.) He stepped away from his desk, forced Gregory out the door, threw him to the floor, jumped on him and beat him until court personnel rushed to Gregory's rescue. The Ninth Circuit affirmed a jury award of compensatory and punitive damages against Judge Thompson. (*Ibid.*)

Judge Thompson claimed that his acts were protected by judicial immunity because he was exercising his "inherent power to maintain order in the courtroom" by evicting Gregory. (*Gregory*, *supra*, 500 F.2d at p. 63.) The court disagreed. It first noted that "[w]hen courts have spoken of immunity for acts within the jurisdiction of a judge, they have declared that the doctrine insulates judges from civil liability 'for acts committed within their *judicial* jurisdiction,' or 'for acts within [their] *judicial* role,' [citation] or for 'their *judicial* acts.' [Citation.] Thus judicial immunity does not automatically attach to all categories of conduct in which a judge may properly engage, but only to those acts that are of a judicial nature." (*Ibid.*)

After acknowledging that it is within a judge's power

to maintain order in the courtroom, the *Gregory* court continued: "It may even be necessary in an isolated instance to use physical force to preserve order. Though necessary, that does not mean the judge is immune. *The decision to personally evict someone from a courtroom by the use of physical force is simply not an act of a judicial nature, and is not such as to require insulation in order that the decision be deliberately reached.*

A judicial act within the meaning of the doctrine may normally be corrected on appeal. But when a judge exercises physical force in a courtroom, his decision is not amenable to appellate correction. More importantly, we cannot believe that the purpose of the judicial immunity doctrine--to promote 'principled and fearless decision-making'--will suffer in the slightest if it is held that judges who physically assault persons in their courtrooms have no automatic immunity." (*Gregory, supra*, 500 F.2d at p. 64, italics added.)

..... **A judge's robe is not a king's crown**. The object of judicial immunity is to ensure "'that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension [of civil liability].'" (*Tagliavia v. County of Los Angeles, supra*, 112 Cal.App.3d at p. 762, quoting *Bradley v. Fisher, supra*,80 U.S. (13 Wall.) at p. 347 [20 L.Ed. at p. 649].) **It was never intended to protect acts of thuggery against litigants merely because the assailant happens to be a judge."**

Quoting the Court from 125 F.3d 324, 334, Johnida W. BARNES, Plaintiff -Appellee, v. Byron R. WINCHELL, Defendant-Appellant, No. 95-4008, United States Court of Appeals, Sixth Circuit, February 3, 1997, to wit:

"Finally, included in the absolute immunity balance is the availability of alternate forums and methods, apart from civil suit for damages, for litigants to protect themselves from the potential consequences of actions taken by a judge. See

Forrester, 484 U.S. at 227, 108 S.Ct. at 544 (emphasizing that a damages suit is not a litigant's only recourse: "Most judicial mistakes and wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.)"

A damages suit is in fact Schmidt's only remedy to stop Buchanan's thuggery that Buchanan orders Sheriff's officers to execute on his behalf.

And finally the following quote comes from Frank BARRETT, Plaintiff-Appellee, v. Nancy I. HARRINGTON, a/k/a Penny Harrington, Defendant-Appellant, No. 96-6207, United States Court of Appeals, Sixth Circuit, argued August 5, 1997 and decided Nov. 20, 1997, to wit:

"Thus, for example, a judge many be liable for action taken in his role as employer, Forrester v. White, 484 U.S. 219, 227-30, 108 S. Ct. 538, 544-46, 98 L.Ed. 2d 555 (1988) (demotion and discharge of court employee is an administrative decision and not "a judicial act"), or for an action that is administrative in nature and that does not alter the rights and liabilities of the parties, Morrison v. Lipscomb, 877 F.2d 463, 464-66 (6th Cir. 1989). This court also has held that the initiation of accusatory processes, such as criminal prosecutions or civil ***contempt proceedings***, is a non-judicial act that may subject a judge to liability. Sevier v. Turner, 742 F.2d 262, 272 (6th Cir. 1984)"

Thomas Buchanan is clearly guilty of initiation of accusatory processes that subject Buchanan to liability for his willful torts.

2. Second prong of the two prong test --- jurisdiction

This Plaintiff was not "licensed" by the State of Iowa to operate a farm tractor on a dirt road while this Plaintiff exercised his common law occupation.

Though calm and collected, this Plaintiff is "the

belligerent claimant in person" as referred to by the United States Supreme Court while the Court spoke of people's RIGHTS. This Plaintiff claims ALL of his unalienable RIGHTS whether in accordance with Amendment IX of the Constitution for the United States of America or in accordance with the Iowa Constitution. This Plaintiff has non-judicially rescinded all contracts with the State of Iowa, and the State of Iowa has not rebutted or objected to said recission of all contractual agreements. This Plaintiff lives in the house built by his great-grandfather and, as said belligerent claimant in person, claims the EXACT same liberty as was enjoyed by this Plaintiff's great-grandfather in 1854 when Plaintiff's great-grandfather walked to Iowa with his team of oxen as a Free Inhabitant without being divorced from rights secured by the Constitutions.

With respect to the subject of whether or not this Plaintiff has voluntarily divorced himself from the Constitution, Chief Justice Rehnquist exclaimed, to wit: "The goal of any constitutional adjudication should be to hold true that balance between that which the Constitution puts beyond the reach of the democratic process and that which it does not." The jurisdiction that is merely presumed to be had by Thomas Buchanan is in fact "that which the Constitution puts beyond the reach of the democratic process" in this specific case.

Traffic courts to enforce seat belt laws, etc., are not courts of law that were given to the Free Inhabitants of America by Benjamin Franklin, Thomas Jefferson and the other founding fathers, many of which gave their lives for this great nation and the intended liberty.

Accordingly, and pursuant to the Declaration of Independence, Traffic Courts and Defendant Thomas Buchanan lawfully have jurisdiction while "***deriving their just powers from the consent of the governed***." The IOWA

DRIVER LICENSE is evidence of consent to be regulated, and the IOWA DRIVER LICENSE is also evidence that Thomas Buchanan has subject matter jurisdiction to determine traffic controversies in his court.

The DRIVER LICENSE is further evidence that persons have willingly divorced themselves from liberty and from Constitutional guarantees. If a licensed person In general brings up the Constitution before a jury in the trial of a traffic matter, that licensed person should be held in contempt of court as the Constitution is completely irrelevant upon contractual agreement. The Constitutions are, however, very relevant when this Plaintiff speaks to ipso facto U.S. citizen Thomas Buchanan about law regarding Buchanan's total lack of all jurisdiction, all while Buchanan is in want of a contractual agreement with Schmidt regarding unlicenced use of an unlicenced farm tractor to tend cows.

As a matter of law now brought to the attention of this Court, this Plaintiff is a white citizen with "inherent" rights as distinguished in 42 U.S.C. §1981 and 42 U.S.C. §1982 from licensed persons of statutory grants and privileges. This Plaintiff is specifically NOT a licensed person in general. This specific Plaintiff is specifically not divorced from the Constitution for the United States of America as an ipso facto person. *"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."* Miranda v. Arizona 384 US 436. Defendant U.S. citizen Thomas Buchanan has abrogated free speech in his court and has acted in complete absence of ALL jurisdiction whatsoever, all while Defendant Buchanan is in total want of any contractual agreement of Schmidt, and all while Defendant Buchanan is in total want of jurisdiction while in want of any license.

A licensee of the State would not have the same rights, but this Free Inhabitant was not a licensed ipso facto

person in Buchanan's court wherein the State was a party, and this Free Inhabitant was not operating a State licensed motor vehicle. While being in full possession of ALL Constitutional RIGHTS without any plea being entered, and with Schmidt never waiving any of said RIGHTS, Buchanan had no jurisdiction whatsoever and this UNLICENCED Plaintiff avers the following is relevant to this Plaintiff, but irrelevant to licenced drivers, to wit:

"***In all Cases ..... in which a State shall be a Party, the supreme Court shall have original Jurisdiction***." Article III, Section 2, cl. 2, of the Constitution for the United States of America.

Courts may exercise their authority within three lawful jurisdictions; those three jurisdictions being common law, equity, and admiralty. There is no criminal aspect within an equity jurisdiction. Thus, lawful courts may hear criminal actions pursuant to either a common law jurisdiction or, in the alternative, Thomas Buchanan may hear a criminal action in his traffic court as a condition of contract under the criminal aspects of an admiralty jurisdiction.

At a certain time in Plaintiff's life, Plaintiff Schmidt was voluntarily subject to the jurisdiction of military courts as a condition of contract under the criminal aspects of an admiralty jurisdiction. Military courts now acting in criminal proceedings against Schmidt for failing to obey orders, would do so with complete absence of all jurisdiction as there is no longer any contractual agreement between Schmidt and the United States Army as there was in the past.

Accordingly, at a certain time in Plaintiff's life, Plaintiff Schmidt was voluntarily subject to the jurisdiction of Thomas Buchanan's traffic court as a condition of contract under the criminal aspects of an admiralty jurisdiction.

Traffic Court now acting in criminal proceedings against Schmidt for failing to obey alleged orders while tending cows, does so with complete absence of jurisdiction as there is no longer any contractual agreement between Schmidt and the State of Iowa as there was in the past.

Furthermore, Thomas Buchanan was in want of Schmidt's signature upon the filed uniform citation and complaint that would thereby give Buchanan jurisdiction at the time Buchanan incarcerated Schmidt.

The courts have ruled that an individual has a DUTY to defend against every charge levied against an individual by the government. Accordingly, Schmidt appeared before Thomas Buchanan to discuss Buchanan's jurisdiction while Buchanan was in want of any contractual agreement for Buchanan to exercise admiralty authority over the use of an unlicenced farm tractor.

Astute learned jurists can readily see that as a matter of law Thomas Buchanan was clearly in want of all jurisdiction on March 2, 2004 respecting Schmidt, whether at the common law, or whether as a condition of contract under the criminal aspects of an admiralty jurisdiction.

CONCLUSION

There is no doubt that Thomas Buchanan has willfully violated freedom of speech and accordingly caused severe injury to this Plaintiff using administrative accusatory processes to incarcerate this Plaintiff.

This Plaintiff has suffered humiliation in the community of being a prisoner in the Iowa County jail. Plaintiff's grand-daughters could not understand why their grand-father was incarcerated, and Buchanan's actions have brought disrespect for the rule of law within the community. The wrongful dismissal of the suit against Thomas Buchanan by the District Court has only added to rapidly growing

disrespect for the rule of law among the people in Iowa County.

This Plaintiff has exhausted all administrative remedies to seek justice prior to seeking judicial relief. Thomas Buchanan has failed to rebut or deny his liability prior to Plaintiff seeking a judicial remedy. Failure to deny the allegations administratively places Thomas Buchanan in dishonor. All the administrative allegations made by this Plaintiff are to be presumed in accordance with Iowa Code section 554.1201(31).

Contractual agreement of liability was perfected administratively by Thomas Buchanan's silence after being served three (3) notices by the Iowa County Sheriff's office.

WHEREFORE, Plaintiff Schmidt prays that this Court grant this Application for Further Review and grant the relief requested in the lower Court by reversing the decision of the Iowa Court of Appeals decision to AFFIRM.

Everyone is entitled to a remedy in law, and a suit for damages is this Plaintiff's only remedy.

s/ Merle Richard Schmidt

Merle Richard Schmidt
C/o P.O. Box 416
Victor, Iowa 52347

VERIFICATION

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding statements and allegations are true and correct as I verily believe.

1-6-06 — Date

s/Merle Richard Schmidt
Merle Richard Schmidt

REQUEST FOR ORAL ARGUMENT

The Appellant, Merle Richard Schmidt, respectfully requests the opportunity to argue this case orally upon submission of this cause.

s/Merle Richard Schmidt
Merle Richard Schmidt
C/o P.O. Box 416
Victor, Iowa 52347

CERTIFICATE OF FILING AND PRINTING COSTS

The undersigned certifies that the cost of filing this Application is $25.00 and that the foregoing was printed, served, and filed at a cost of $3.20 each for a total of $95.40

s/Merle Richard Schmidt

I declare under penalty of perjury under the laws of the United States of America that, while being formatted to booklet size, the foregoing Application for Further Review and the Order of the Iowa Supreme Court contained in this Appendix are true and correct as I verily believe. Executed on:

April 6, 2006 — Date

Merle Richard Schmidt — Signature